2300.

SUPREME COURT OF THE UNITED STATES.

No. 190.

ELI CLARK, WILLIAM GREEN, AND HUGH McGILL, PL'FFS IN ERROR,

vs.

THE PRESIDENT, DIRECTORS, AND COMPANY OF MANUFACTURERS' INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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J. & G. S. Gideon, Printers.

UNITED STATES, *ss:*

The President of the United States, to the judges of the circuit court, holden in and for the district of Massachusetts, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Eli Clark, William Green, and Hugh McGill, all of Malone, in the county of Franklin and State of New York, and citizens of said State, plaintiffs, and the President, Directors, and Company of the Manufacturers' Insurance Company, a corporation duly established by the laws of the State of Massachusetts, at Boston, in our district of Massachusetts; said President, Directors, and Company being citizens of said State of Massachusetts, defendants, in a plea of the case, a manifest error has intervened to the great damage of said plaintiffs, as in their complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then under your seal you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-second.

JAS. B. ROBB, *Clerk.*

(Allowed by) PELEG SPRAGUE,
Judge Mass. dist.

The President and Directors of the Manufacturers' Insurance Company acknowledge notice and waive citation. By their att'y,
B. R. CURTIS.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

At the circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-seven, before the honorable Levi Woodbury, associate justice, and Peleg Sprague, district judge.

ELI CLARK, William Green, and Hugh McGill, all of Malone, in the county of Franklin, and State of New York, and citizens of said State, plaintiffs,
versus
The PRESIDENT, Directors, and Company of the Manufacturers' Insurance Company, a corporation duly established by the laws of the State of Massachusetts, at Boston, in our district of Massachusetts; said President, Directors, and Company being citizens of said State of Massachusetts, defendants.

In a plea of the case, for that, on the 30th day of August, in the year 1845, the plaintiffs were interested in a cotton factory, fixtures, machinery, water-wheel, drums, shafts, and gearing connected therewith, situated in the said Malone, and used and occupied by them, of the value of thirty thousand dollars, and so continued interested until the destruction of the said property by fire as hereinafter mentioned; and the defendants on the same day, in consideration of a premium in money to them paid therefor by the plaintiffs, made a policy of insurance upon the said building and other property, and thereby promised the said Clark [and] Green, (under the name of Green & McGill,) to insure fourteen thousand dollars thereon, to wit, three thousand dollars on the said building and fixtures, including water-wheel, drums, shafts, and gearing; and eleven thousand dollars on the said machinery, from the said 30th day of August, 1845, to the 30th day of August, 1846, against all such loss or damage which should or might happen by fire, originating in any cause, (except invasion [by] public enemies, riots, civil commotion, or military or usurped power;) the said sum, in case of loss, to be paid to the Ogdensburgh Bank, a legal corporation existing in the State of New York, in sixty days after proof of the same, it being understood that the property was under a contract of sale by the said bank to the pl'ffs, which was then unpaid, the pl'ffs warranting that the waste should be removed to a safe distance from the said mill as often as once in every forty-eight hours, and that the lamps in the carding-rooms should be enclosed in glass; and the said policy further provided as follows, to wit:

This policy being made and accepted, upon the representation of the said assured contained in their application therefor, (to which reference is to be had,) it is fully understood by and between the parties hereto, that if said representation does not contain a full and true exposition of all the facts and circumstances in relation to the condition, situation, value, and risk of the property hereby insured, so far as the same are material to the risk; or, if the situation of the property, or the circumstances affecting the risk, shall be during the existence of this policy altered or changed by or through the advice, consent, or agency of the assured, so as to increase the risk hereby assumed; or, if the said property shall be sold or conveyed in whole or in part; or, if this policy

shall be assigned without the consent of this company; or, if any other insurance has been or shall hereafter be made upon said property or any part thereof by said assured, or for their use and benefit without the knowledge and consent of this company, then and in every such case the risk hereby assumed shall cease, and this policy shall become void.

And it is provided, that in case of any loss or damage, this company may within sixty days after having notice thereof, replace the property lost or damaged with other of the like kind and quality.

And it is also provided, that in case there should be any other insurance upon said property made as aforesaid, with the knowledge and consent of this company, the assured shall be entitled to recover on this policy no greater proportion of the loss sustained, than the sum hereby insured bears to the whole amount insured thereon; and that, whenever this company shall pay any loss, the assured shall assign and make over to this company all their right and claim, to recover satisfaction therefor from and against any person or persons, (except other insurers,) and shall prosecute therefor, if requested, at the cost and for the use of this company. And in case of any loss or damage, the same shall be paid without deduction within sixty days after proof thereof, unless the property be replaced as hereinbefore provided.

And this company agree, that if the assured shall sell the aforesaid property, or any part thereof, before the expiration of this policy, a proportion of the premium received shall be repaid upon receiving notice of such sale before a loss happens, reserving however three months premium on the sum insured, over and above the amount which would be due at the time of receiving such notice; or, the policy may continue for the benefit of such purchaser, if this company give their consent thereto, to be evidenced by a certificate of the fact, or by endorsement on this policy.

N. B. Books of account, securities for money, evidences of debt, money, jewels, plate, medals, paintings, sculptures, and curiosities, are not insured, unless particularly mentioned in the policy.

This policy may be continued in force after the time herein limited has expired, if the assured pay the premium required, and the consent of this company is certified.

And the plaintiffs aver, that afterwards, before the expiration of the said policy, to wit, on the thirteenth day of March, in the year eighteen hundred and forty-six, the said factory, fixtures, machinery, water-wheel, drums, shafts, and gearing, were accidentally, and by misfortune, totally consumed by fire. And the plaintiffs further aver, that the said defendants were duly and legally notified of the said loss, and proper proof thereof was made to the said defendants on the thirtieth day of March, in the year eighteen hundred and forty-six, and after sixty days had elapsed from the time of the proof of the said loss as aforesaid, the said defendants were duly requested to pay to the said Ogdensburgh Bank the said sum of fourteen thousand dollars as aforesaid. And the plaintiffs further aver, that the waste in the said policy named was removed

to a safe distance from the mill as often as once in forty-eight hours as the said policy required, and that the lamps in the carding rooms were inclosed in glass as in and by the said policy is required. And the plaintiffs further aver, that they have performed and fulfilled all things in the said policy of insurance mentioned to be done and performed by them; of all which matters and things these defendants have had notice, yet though requested, they have neglected and refused to pay the said sum either to the said Ogdensburgh Bank, or to the plaintiffs.

Also, for that the Ogdensburgh Bank, a corporation duly established by the law of New York, and doing business at Ogdensburgh, in the said State, were, on the 30th day of August, in the year 1845, interested in a certain factory building, together with the fixtures, machinery, water-wheel, drums, shafts, and gearing, connected therewith, situated in Malone, in the county of Franklin, and State of New York, then occupied by the plaintiffs, and so continued interested until the destruction of the said property by fire, as hereinafter stated; the said property being of the value of thirty thousand dollars. And the defendants, in consideration of a premium in money to them paid therefor by the plaintiffs, in behalf of the said bank, by whom they were authorized and directed to cause insurance to be made on the said property for the benefit of the said bank, made a policy of insurance on the said building, and other property, and thereby promised the plaintiffs, the said Clark, Green, (under the name of Green & McGill,) to insure fourteen thousand dollars thereon, as follows, to wit, three thousand dollars on the said buildings and fixtures, including water-wheel, drums, shafts, and gearing, and eleven thousand dollars on the said machinery, from the said 30th day of August, 1845, to the 30th day of August, 1846, against all such loss or damage as should happen by fire, originating in any cause, except invasion, public enemies, riots, civil commotion, or military or usurped power; the said sum, in case of loss, to be paid to the said Ogdensburg Bank in sixty days after proof of the same; it being understood that the said property was under a contract of sale by the said bank to the plaintiffs, which was then unpaid; the plaintiffs warranting that the waste should be removed to a safe distance from the said mill as often as once in every forty-eight hours, and that the lamps in the carding room should be enclosed in glass.

And the plaintiffs aver, that afterwards, and before the expiration of the said policy, to wit, on the 13th day of March, in the year 1846, the said building and other property were accidentally, and by misfortune, totally destroyed by fire. And the plaintiffs further aver, that the said defendants were duly and legally notified of the said loss, and proper proof thereof was made to them, on the 30th day of the said March, and after sixty days had elapsed from the time of the proof of the said loss, the defendants were requested to pay to the said Ogdensburg Bank the said sum of $14,000. And they further aver, that the waste, in the said policy named, was removed to a safe distance from the mill as often as once in forty-eight hours, and that the lamps in the carding room were enclosed in glass, as required by the said policy. And the plain-

tiffs aver, that they have performed all things by them required to be done by the said policy; of all which the defendants had notice, yet they have never paid the said sum to the plaintiffs, or the said bank.

Also, for that the said defendant, on the day of the purchase of this writ, being indebted to the plaintiffs in twenty thousand dollars, for money lent by the plaintiffs to the defendants, and in the same amount for money received by the defendants to the use of the plaintiffs, and in the same amount for money paid by the plaintiffs for the use of the defendants at their request, and in the same amount for money due from the defendant to the plaintiff for interest of money before then due and owing from the defendants to the plaintiffs, and by the plaintiffs forborne to the defendants, at the defendant's request, for a long time before then elapsed, in consideration thereof promised to pay the same amount to the plaintiffs on demand; yet they have not paid the same, to the damage of the said Clark, Green & McGill, as they say, the sum of twenty thousand dollars.

This action was entered at the October term of this court, A. D. 1846, when the parties appeared by their respective attorneys, and was thence continued from term to term until the present term.

And now the said defendants come, &c., when, &c., and say, they did not promise in manner and form as the said plaintiffs have above thereof declared against them; and of this they put themselves upon the country. By their attorney.

B. R. CURTIS.

And the plaintiffs do the like, by their attorneys.

R. FLETCHER & T. P. CHANDLER.

Issue being thus joined, the cause, after a full hearing, is committed to a jury, sworn according to law to try the same, who, after hearing all matters and things concerning the same, return their verdict therein, and upon oath say:

The jury find that the said defendants did promise in manner and form as the said plaintiffs have declared against them in the said last count of the declaration, and assess damages in the sum of twelve hundred dollars; and as to the remaining counts, the jury find that the defendants did not promise in manner and form as the plaintiffs have therein declared against them.

It is thereupon considered by the court, that the said Eli Clark, William Green, and Hugh McGill, recover of the said President, Directors, and Company of the Manufacturers' Insurance Company, the sum of twelve hundred dollars, damages, and the costs of suit, taxed at

Bill of exceptions.

Circuit court of the United States, Massachusetts district, May term, 1847.

ELI CLARK and al.
vs.
MANUFACTURERS' INSURANCE COMPANY.

At the trial of this cause before the jury, the plaintiffs, to maintain the issue on their part, offered in evidence the following policy of insu-

rance, the due execution thereof being admitted by the counsel for the defendants. (The written part of the policy is in italics, to distinguish it from the printed part or blank on which the policy was made.)

Insurance against fire.

No. 1,215. By the Manufacturers' Insurance Company.

This policy of assurance witnesseth, that whereas *Eli Clark, William Green, and Hugh McGill*, hath paid the Manufacturers' Insurance Company, in Boston, *two hundred and forty-five* dollars, for the assurance of the property hereinafter mentioned from loss and damage by fire:

Now, know all men by these presents, that the capital stock of the said corporation shall be subject and liable to make good and satisfy, unto the said *Clark, Green, and McGill*, the sum of *fourteen thousand* dollars, on any loss or damage which shall or may happen by fire, originating in any cause, (except invasion, public enemies, riots, civil commotion, or military or usurped power,) to *their cotton factory and fixtures, and moveable machinery therein situated, at Malone, in the State of New York, namely, three thousand dollars on said factory buildings and fixtures, including water-wheel, drums, shafts, and geering, and eleven thousand dollars on said moveable machinery. The assured warrant that the waste shall be removed to a safe distance from the mill as often as once in forty-eight hours, and that the lamps in the carding room shall be enclosed in glass. It is understood that the property is under a contract of sale, by the Ogdensburg Bank, to Eli Clark, William Green, and Hugh McGill, which is yet unpaid, and is hereby agreed, in case of loss by fire, the money is to be paid at the Ogdensburg Bank*, within the term of *one year*, commencing at noon on the *thirteenth* day of *August*, eighteen hundred and *forty-five*, and ending at noon on the *thirteenth* day of *August*, eighteen hundred and *forty-six*, not exceeding, in any case, or under any circumstances whatever, the sum of *fourteen thousand* dollars; such loss to be estimated according to the true and actual value of said property at the time the same shall happen.

Amount insured, $14,000.

Amount of premium, $245.

Policy.

This policy being made and accepted upon the representation of the said assured, contained in *their* application therefor, (to which reference is to be had,) it is fully understood, by and between the parties hereto, that if said representation does not contain a full and true exposition of all the facts and circumstances in relation to the condition, situation, value, and risk of the property hereby insured, so far as the same are material to the risk; or if the situation of the property, or the circumstances affecting the risk, shall be, during the existence of this policy, altered or changed, by or through the advice, consent, or agency of the assured, so as to increase the risk hereby assumed; or if the said property shall be sold or conveyed in whole or in part; or if this policy shall be

assigned without the consent of this company; or if any other insurance has been or shall hereafter be made upon said property, or any part thereof, by said assured, or for *their* use and benefit, without the knowledge and consent of this company; then, and in every such case, the risk hereby assumed shall cease, and this policy shall become void.

And it is provided, that in case of any loss or damage, this company may, within sixty days after having notice thereof, replace the property lost or damaged with other of the like kind and quality.

And it is also provided, that in case there should be any other insurance upon said property, made as aforesaid with the knowledge and consent of this company, the assured shall be entitled to recover on this policy no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon; and that, whenever this company shall pay any loss, the assured shall assign and make over to this company all right and claim to recover satisfaction therefor, from and against any person or persons, (except other insurers,) and shall prosecute therefor, if requested, at the cost and for the use of this company. And in case of any loss or damage, the same shall be paid, without deduction, within sixty days after proof thereof, unless the property be replaced, as hereinbefore provided.

This policy is to be void, if camphine or chemical oil is used by the assured, unless its use is especially provided for in this contract.

And this company agree, that if the assured shall sell the aforesaid property, or any part thereof, before the expiration of this policy, a proportion of the premium received shall be repaid, upon receiving notice of such sale before a loss happens, reserving, however, three months' premium on the sum insured, over and above the amount which would be due at the time of receiving such notice; or the policy may continue for the benefit of such purchaser, if this company give their consent thereto, to be evidenced by a certificate of the fact, or by endorsement on this policy.

N. B. Books of account, securities for money, evidences of debt, money, jewels, plate, medals, paintings, sculptures, and curiosities, are not insured, unless particularly mentioned in the policy.

This policy may be continued in force after the time herein limited has expired, if the assured pay the premium required, and the consent of this company is certified.

In witness whereof, the President of this corporation has subscribed this policy, and the Secretary thereof has countersigned the same, at Boston, this *thirteenth* day of *August*, in the year eighteen hundred and *forty-five*.

C. W. CARTWRIGHT,
President.

SAMUEL HUNT, *Secretary*.

P. L. HALL, *Agent*.

The plaintiffs then proved that the title in the property was in the Ogdensburg Bank, derived from Jonathan Stearns, the real estate by

deed, dated October 17, 1837, and the personal property by mortgage deed, dated May 1, 1834, and sheriff's sale made October 17, 1837; and that the plaintiffs entered into the following agreement with the said bank, on the 26th of January, 1842:

This agreement, made the twenty-sixth day of January, one thousand eight hundred and forty-two, between the president, directors, and company of the Ogdensburg Bank of the first part, and Eli Clark, William Green, and Hugh McGill, of Middleburg, in the State of Vermont, of the second part, witnesseth: the said parties of the first part covenant with the said parties of the second part, that after the payment of fourteen thousand dollars, with interest, being made by the said parties of the second part to the said parties of the first part, at their banking house, in the village of Ogdensburg, as follows, to wit: The interest to be paid yearly on all sums unpaid, and the principal as follows, viz., one thousand dollars on each of the first days of January, 1843, 1844, 1845, and 1846; two thousand dollars on each of the first days of January, 1847 and 1848; and three thousand dollars on each of the first days of January, 1849 and 1850, that then the said parties of the second part, on their request and cost, shall receive a warranty deed in fee simple of all and singular the following described pieces of land, situate in the town of Malone, county of Franklin, and State of New York, to wit:

First. All that certain piece of land bounded as follows, beginning at the northwest corner of a lot of land formerly owned by Elihu Thomas, and running from thence north thirty-four feet, and from thence, east, to the centre of Salmon river; thence, up the centre of said river to the northeast corner of said lot belonging to said Thomas; thence west, on the north line of said lot, to the place of beginning, being part of great lot No. 39, and known as the "Stearns Ashery lot."

Second. All that certain other piece of land in said town of Malone, known as the lot on which the cotton factory formerly belonging to Jonathan Stearns stands, and is bounded as follows, beginning at a stone in or near the north line of the street six rods east from the middle of Salmon river, running from thence, north seven degrees west, three chains and sixty-seven links, to the lands of Hiram Horton; thence, north forty-two degrees west, eighty-seven links and one-half, to the north corner of said lot, in the middle of Salmon river; thence, south five degrees west, along up the middle of Salmon river, four chains and sixty-two and one-half links, and thence to the place of beginning.

Third. Also all that certain other piece of land in said town of Malone, and being the lot on which the old store and dwelling-house formerly belonging to the said Jonathan Stearns stands, bounded as follows, to wit, on the north and west by the highways, and on the south by land once belonging to John L. Fuller, deceased, and on the east by Amsden and Thompson's land, containing one acre of land.

Also the said parties of the second part shall receive a deed without warranty of the following lot, and all right of the parties of the first part to the redemption money connected with said lot, in the hands of

Aaron Beman, late sheriff of Franklin county aforesaid, subject to the fees of the said sheriff, against the parties of the first part, viz., all that certain piece of land in said town of Malone, on Great lot No. 39, Village lot No. 1, bounded on the east by the highway, on the north and west by Benjamin Clark's land, on the south by Leonard Bichnell's land, containing one fourth of an acre of land, and being the same land on which stands the dwelling-house which formerly belonged to Anselm Lincoln. And also all the machinery and personal effects connected with the cotton factory standing on one of the lots above described, and all the property, right, and interest of the parties of the first part, in all and every estate, real and personal, lying in Malone aforesaid, which they now own, and are possessed of, by reason of their debt against Jonathan Stearns. And the said parties of the second part hereby covenant with the parties of the first part to pay punctually the said sum of money, with the interest as aforesaid, at the times and place aforesaid, and also one hundred and fifty-three $\frac{78}{100}$ dollars with interest, by the first day of August next, being part of the premium money paid by the bank on the policy of insurance which will expire on the thirtieth day of August next, at noon.

And the said parties of the second part hereby covenant with the parties of the first part to insure with some company, to be approved by the parties of the first part, from the 29th August next, from year to year, during the life of this contract, the cotton factory and machinery hereby contracted, at fourteen thousand dollars, and will assign the policies to the parties of the first part for the security of this contract.

And in case of neglect, by the first of August of any year, so to insure, the said parties of the first part shall have the privilege of insuring to the amount due on this contract, and charging the expense to the parties of second part. And the parties of the second part hereby covenant to pay all the taxes of every kind and nature on the said property. And it is hereby agreed that the said parties of the second part shall have and enjoy the possession of said property during their performance of this contract.

Signed and sealed the day and year first above written.

WILLIAM GREEN, [SEAL.]
ELI CLARK, [SEAL.]
HUGH MAGILL. [SEAL.]

Sealed and delivered in presence of—
JOHN H. RUSSELL,
JOHN MAGOUN.

Witnesses to the execution of the parties of the second part.

C. H. BURNHAM.

Witness as to Jno. D. Judson, cashier.

JNO. D. JUDSON, *Cr.* [L. S. Bk.]

On this agreement were the following endorsements:

$1,000.

Received October 4, 1844, one thousand dollars on the within contract by Magill and Green's draft, on C. H. and J. J. Merrett, of Troy.

$300.

Received March 2, 1845, three hundred dollars, being the amount of draft on them, in favor of John Leslie Russell, esq.

$1,667 $\frac{13}{100}$.

Received June 22d, 1845, sixteen hundred and sixty-seven $\frac{13}{100}$ dollars, by Magill and Greene's draft on C. H. and J. J. Merritt, of Troy.

$1,000.

Received *as* September 23d, 1845, one thousand dollars, by Magill and Green's draft on C. H. and J. J. Merritt, of Troy.

$101.

Received as October 29, 1845, one hundred and one dollars, being the amount collected of A. Beman, late sheriff.

$153.88. Received, at sundry times, on e hundred [and] fifty-three $\frac{78}{100}$ dollars, being the part of the premium money for insurance paid by the bank mentioned in the within contract.

The plaintiffs also proved the loss of the property by fire, notice of the loss, that the waste was removed, and that the lamps in the carding room were enclosed in glass, as required by the policy. Every thing was proved or admitted that was necessary to make out a prima facie case for the plaintiffs.

The evidence showed likewise that the fire originated in the picking room, which was situated in the centre of the building, and in which a glass lamp was frequently suspended from the ceiling, and into which room a glass lantern was carried that evening and placed by the workman on the window sill while the picker was in operation; around the top of this lantern he first saw the light and fire, as if the cotton dust had become ignited through the air-holes, and the fire was communicated with such rapidity to the whole cotton he was unable to extinguish it. The evidence showed farther, that when the picking room had been occasionally used to work in during the night time, this lantern, or one like it, had for three years been carried in, and that the globe lamp had been long used there suspended, with a reflector over the top, and was lighted when they worked at night in the picking room, as well as the lantern. This appears to have been the practice soon after 1834 or 1835, but no evidence was offered that it had been before. When the plaintiffs bought the property in 1842 they found the lamps hung and ready for use, and they continued to use it as it had been used before.

The defendants then offered the following evidence:

1. The following application of Jonathan Stearns—

Manufacturers' Insurance Company.

The subscriber requests insurance against fire by the Manufacturers' Insurance Company in Boston, on interest in the cotton factory described below, viz:

$ on the building and fixtures, including water-wheel, drums, shafts, and geering.
$ on the machinery.
$ on the stock in the building, raw, manufactured, and in the various stages of manufacturing.

The applicant requested to answer the following questions:

1. Where is the building situated?
1. In the town of Malone. Franklin county, N. Y.
2. How long is it?
2. One hundred feet.
3. How wide is it?
3. Forty-two feet, with porticoes 17 feet square.
4. How many stories high is it?
4. Six, with attic.
5. How many spindles are there in it?
5. Two thousand four hundred and thirty-six.
6. How are the several stories occupied; (state here, basement story for wheel pit, machine shop, &c., as the case may be: first story, for card room; state how many cards; second story, for spinning—how many frames, mules, or throstles; third story, for weaving—how many looms; fourth story, for dressing room—how many dressers; if any room has a mixture of machinery, state the kinds and quality in each room.)
6. Basement for water wheel, geering, &c.; 1st story, machine shop for wood and iron work, also cloth room and picking machine; 2d story, eighteen cards, three drawing frames, 3 speeders, and one lap machine; 3d story, ten spinning frames, spooler, 2 warpers, and three dressing machines; 4th do., weaving room, with 80 looms; 5th do., 6 mules, with 216 spindles each; this is the attic.
7. Is the factory a joint stock concern; if yea, into how many shares is the stock divided; on how many shares is insurance wanted; is there any insurance for account of the corporation or company, and how much?
7. Private property.
8. Are the walls of brick, stone, or wood?
8. Stone.
9. If of brick or stone, are they solid, or are they hollow?
9. Solid.
10. Are the walls in any room farred off and plastered, or lined with wood?
10. Two sides and overhead in the picking room is plastered on wood, (half of two sides, all of one side in the stories, with all the 4th story in the portico, is plastered on wood,) with two sides and overhead in attic, the rest plastered on wall.
11. If the walls are of wood, are they filled in solid with brick to the highest point of the building at the end, and to the plates at the sides?

[11.]

12. Is the roof covered with slate, tile, or metal, or with shingles laid in mortar?

12. Pine shingle, without mortar.

13. Is the roof plastered or white-washed on the inside; if yea, state which?

13. Neither.

14. Is there a wooden coving or gutter, or both?

14. Wooden coving.

15. Are all the floors laid in mortar?

15. Are not.

16. Are the band holes. and all other openings in the floors boxed, and the sills of the doors and stairways laid high, so that the floors may be flowed with water one inch deep?

16. They are not.

17. Are there permanent ladders fixed to each wing of the building, extending to the highest point of the roof?

17. There is not.

18. Are there moveable ladders of sufficient length to reach the windows of each story?

18. There is none.

19. Is any part of the building used as a machine shop to work in wood or iron, or both; if yea, state which, and in what part of the building it is, and whether there is any furnace, forge, or stove in that part?

19. There is, as mentioned in answer 6th, also a close stove in both ends.

20. How is the building warmed; if by steam, state whether the fire for heating the boiler is within or without the walls of the building; if by heated air, state whether the furnace is within or without the walls of the building; if by stoves, state which of the rooms have stoves in them, and how many stoves are used in the building; and if peculiar, describe them?

20. Nine cast iron close stoves, each 3 feet long, the stove-pipe goes into the chimney that is in the ends of the building.

21. Are there any sheet iron stoves other than Lehigh coal stoves lined with fire-brick, or pots of pipe clay, in the building?

21. None.

22. What fuel is used to warm the building?

22. Hard wood.

23. Are the frames of the cards, looms, and spinning frames, of iron?

23. The frames of the cards are wood, looms are iron and wood frames, 5 spinning frames are all iron, 5 more have iron ends and wooden roller beams.

24. Are the drums and cylinders of iron?

24. Iron shafts and wooden drums.

25. Is there a porch of the height of the building; if yea, is there a staircase in the porch outside the factory walls; are there doors communicating with each story of the factory, covered with sheet iron or tin on both sides?

25. There is a staircase in the porch outside of the walls of the building; the doors are wood, without tin or iron cover.

26. Is there a forcing pump in the factory; if yea, where is it situated; is it geered to the wheel; is there a pipe in each story; if nay, are there tubs or casks of water and buckets constantly kept in each story of the building?

26. None; there is a pump in the third story, and tubs of water [and] buckets in each story, 23 in all.

27. Is there a good engine belonging to the factory; if yea, is there any hose belonging to it; and if there be, state if suction hose, and leading hose, and how much of each; also if there be a good hose reel, and if there be a regular company belonging to the engine, and how often they are called out to try it?

27. None; but one belongs to the village, within one hundred rods, commanded [by] the owner of the building.

28. Are there any other engines near enough to give assistance in case of fire; if any, state how near, &c.?

28. Answered in 27.

29. Is there a constant watch kept in the building; if nay, is there any watch; state the arrangement with regard to it.

29. No.

30. Is there a watch clock in the building?

30. Is not.

31. Is there any exposure from other buildings, and what building; are there any within one hundred feet; if any, are there iron or wooden shutters to each of the windows in that part of the building exposed?

31. One building stands 64 feet from one corner, and one other 89 feet; both dwelling-houses; no iron shutters on the factory.

32. Is the waste collected and removed from the factory daily?

32. It is.

33. How is the building lighted; if there be any lights not enclosed in glass used in any part of the building, state in which of the rooms such lights are used.

33. No open lamps used in any part of the building except the machine shop, and those are intended to be kept covered.

34. Is the picker inside the building; if within, state where situated and how secured; if in a separate building, state if the passage-way communicating with the factory is secured by an iron door at each end, or how otherwise secured.

34. The picker is inside of the building, but no lamps used in the picking room; the doors are wood, and not covered.

35. Is there any lightning-rod to the building?

35. No.

36. How old is the building?

36. Built in the summer of 1828.

37. Is there any fire-heat used in the building for any purpose other than to warm it?

37. None except for dressing.

38. How fine is the yarn spun; state how many hanks to a pound, or yarn of what number?
38. 16 and 18 are the average numbers.
39. How many mules?
39. Six.
40. How many looms?
40. Eighty.
41. What kind of looms?
41. Common crank looms.
42. How many cards?
42. Eighteen.
43. How many drawing frames?
43. Three.
44. How many throstle frames?
44. 5 of 96 spindles each, and 5 of 132 do., making 10 in all.
45. How many speeders, and by whom made?
45. 3 speeders, made by Rogers, Ketchum & Grasbam, Patterson, N. Y.
46. Are the speeders geered or belted?
46. Belted.
47. How many dressers, and what kind?
47. 3, common kind.
48. How many warpers, and what kind?
48. 2, common kind.
49. How many extensers?
49. None.
50. How long has the machinery been running?
50. First yarn spun Dec. 5th, 1832.

You will please give me your lowest terms, and say if you will take a draft accepted on a good house in New York, or a check on Ogdensburg Bank. Please let me hear from you on the receipt of this.

JONA. STEARNS.

Malone, April 28th, 1834.

P. S.—After I know your terms, I shall probably insure on 15 to 20 thousand dollars in your company, and may wish to insure in some other company more. J. S.

The following was written in pencil at the close of the application by the agent at Pittsfield:

"The assured warrants that the waste shall be removed as often as once in 48 hours to a safe distance from the mill, and that the lamps in the carding rooms shall be enclosed in glass; (this condition is required.")

2. A policy to the said Stearns, on the same property for one year, from July 1, 1834, the written clauses in which were as follows:

His cotton factory building and fixtures, moveable machinery, and stock in the same, situated at Malone, in the State of New York, as

follows, viz: Three thousand dollars on said factory building and fixtures, including water-wheel, drums, shafts, and geering; eleven thousand dollars on said moveable machinery in the factory, and one thousand dollars on his stock in the same, raw, manufactured, and in the various stages of manufacturing. The assured is privileged to insure a further sum, not to exceed ten thousand dollars, on said building, fixtures, machinery, and stock. The assured warrant that the waste shall be removed as often as once in forty-eight hours to a safe distance from the mill, and that the lamps in the carding rooms shall be enclosed in glass.

On which policy were the following endorsements: "In consideration of one dollar, to me in hand paid before the delivery hereof, and for divers other good causes and considerations me thereunto moving. I do hereby transfer, assign, and set over the foregoing policy of insurance, and all rights and benefits to result therefrom, to the president, directors, and company of the Ogdensburg Bank.

In witness whereof I have hereunto set my hand this 8th day of July, 1834.

JONA. STEARNS.

In presence of HENRY S. HORSE, JR.

The Manufacturers' Insurance Company hereby consent that this policy of insurance be assigned by the assured to the president, directors, and company of the Ogdensburg Bank.

P. L. HALL, *Agent*.

3. The following letter, July 1st, 1834:

OGDENSBURG BANK, *June 17th*, 1835.

PARKER L. HALL, ESQ.

DEAR SIR: I enclose my draft on Albany, for $263, for the premium on the continuance of the policy of insurance, for one year, from the 1st July next, granted at your agency by the Manufacturers' Insurance Company, to Jona. Stearns, of Malone in this State, on his cotton factory and machinery, and by him assigned to this institution, marked P, No. 82. Please send me the necessary certificate.

Yours, &c.

D. C. JUDSON, *Cash'r*.

4. A policy to the said Stearns, on the same property for one year, from July 1, 1835, the written clauses in which were as follows:

"His cotton factory, building and fixtures, moveable machinery, and stock in the same, situated at Malone, in the State of New York, namely, three thousand dollars on said building and fixtures, including water-wheel, drums, shafts, and geering; eleven thousand dollars on said moveable machinery; and one thousand dollars on said stock, raw, manufactured, and in the various stages of manufacturing. Loss, if any, payable to the president, directors, and company of the Ogdensburg Bank.

"The assured warrants that the waste shall be removed to a safe dis-

tance from the mill, as often as once in forty-eight hours, and that the lights in the carding-room shall be enclosed in glass."

5. The following letter:

OGDENSBURG BANK, *August* 7, 1836.

PARKER L. HALL, ESQ.

DEAR SIR: I enclose for renewal or continuance, the policy of insurance on the factory of Col. Stearns, with draft on M. F. F. Bank, Albany, for premium. If consistent, should desire it to run for one year from the time of renewal. If your rules require it to be continued from the day it expired, let it be so done.

Yr. ob. st.

D. C. JUDSON, *Cash'r.*

6. A policy to Stearns for one year, from August 11th, 1836, the written clauses in which were as follows:

"His cotton factory, building and fixtures moveable machinery, and stock in the same, situated at Malone, in the State of New York, namely: Three thousand dollars on said building and fixtures, including water-wheel, drums, shafts, and gearing; eleven thousand dollars on said moveable machinery, and one thousand dollars on said stock, raw, manufactured, and in the various stages of manufacturing. The assured warrants that the waste shall be removed to a safe distance from the mill as often as once in forty-eight hours, and that the lights in the carding-room shall be enclosed in glass. Loss, if any, payable to the president, directors, and company of the Ogdensburg Bank."

7. The following letter:

OGDENSBURG BANK, *Aug.* 24, 1837.

PARKER L. HALL, ESQR.

SIR: Above you have a draft on Albany, for $263, for a new policy on the factory, Jonathan Stearns', in Malone, Franklin co., to commence on the day of your receipt of, for one year, making the loss as heretofore, payable to this institution. Please enclose the policy to me.

Yr. obt. svt.

D. C. JUDSON.

8. A policy to Stearn, for one year, from August 27, 1837, the written clauses of which were as follows:

"His cotton factory building, machinery, and stock in the same, situated at Malone, in the State of New York, as follows, namely: Three thousand dollars in said cotton factory building and fixtures, including water-wheel, drum, shafts, and gearing; eleven thousand dollars on said moveable machinery in the same mill, and one thousand dollars in stock, raw, manufactured, and in the various stages of manufacturing. The assured warrant that the waste shall be removed to a safe distance from the mill, as often as once in forty-eight hours. Loss, if any, payable to the president, directors, and company of the Ogdensburg Bank."

9. The following letter:

MALONE, *August 13th*, 1838.

P. L. HALL, ESQ.

SIR: The property insured by the company, of which you are agent, has passed out of my hands to the president, directors, and company of Ogdensburg Bank. All communications will be hereafter made to that institution.

I am, sir, resp'y, yr. obt. srt.

JONA. STEARNS.

10. The following letter:

OGDENSBURG BANK, *August 25th*, 1838.

PARKER L. HALL, ESQ.

DEAR SIR: I enclose my draft on New York, for $245 50, for continuance of insurance on policy No. 403, P, on the Jonathan Stearns' cotton factory, in Malone, Franklin co., N. Y. The property has been transferred to this institution, and I wish a new policy in the name of the President, Directors and Company of the Ogdensburg Bank," for the same amount on the buildings and machinery, omitting the $1,000 on stock, as the mill is not now in operation, and cannot say when it will be, but we reserve the right of putting it in operation, at any time during the year, under the insurance.

Insurance, say on building, &c., as heretofore,	$3,000
" " " moveable machinery "	11,000
	$14,000

To take effect on the immediate receipt of this application. You will please enclose the policy to me by mail.

Respectfully, yrs., &c.

D. C. JUDSON, *Cash'r.*

JNO. D. JUDSON, *Teller.*

11. A policy to the Bank, for one year from August 30th, 1838, the written clauses on which were as follows:

"The cotton factory building and machinery, formerly owned by Jonathan Stearns, situated at Malone, Franklin county, and State of New York, as follows, namely: Three thousand dollars on said factory building and fixtures, including water-wheel, drums, shafts, and gearing; and eleven thousand dollars on said moveable machinery in said factory.

The assured warrant that the waste shall be removed, as often as once in forty-eight hours, to a safe distance from the mill, and that the lamps in the carding-room shall be enclosed in glass. It is understood that the factory is not in operation, and that the assured have liberty to put the same in operation, agreeably to the reservation heretofore made by Jonathan Stearns."

12. The following letter:

OGDENSBURG BANK, *Aug.* 15*th*, 1839.

PARKER L. HALL, ESQ., Agent, &c.

DEAR SIR: I enclose my draft on New York, for $245, being the amount of premium for the continuance of policy No. 481, P, given to the president, directors and company of the Ogdensburg Bank, on cotton factory, &c., at Malone, N. Y., and which will expire on the 30th instant, at noon. Please send me a new policy, or a renewal receipt for the continuance of same policy, for one year from the 30th instant.

Respectfully, yours, &c.

JOHN D. JUDSON, *Cr.*

13. A policy to the Bank, for one year from August 30th, 1839, the written clauses in which were as follows:

Their cotton factory building, fixtures, and machinery in the same, situated at Malone, in the State of New York, as follows, namely: Three thousand dollars on said factory building and fixtures, including water-wheel, drums, shafts, and gearing; and eleven thousand dollars on their moveable machinery in said factory building. The assured warrant that the waste shall be removed as often as once in forty-eight hours to a safe distance from the mill, and that the lamps in the carding rooms shall be enclosed in glass.

14. The following letter:

OGDENSBURG BANK, *August* 12*th*, 1840.

PARKER L. HALL, ESQ., Agent, &c.

DEAR SIR: I enclose my draft on Albany for $245, being the amount of premium for the continuance of policy No. 551, P, given to the president, directors and company of the Ogdensburg Bank, on cotton factory, &c., at Malone, Franklin co., N. Y., and which will expire on the 30th instant, at noon. Please send me a new policy, or a renewal receipt for the continuance of same policy, for one year from the 30th instant.

Very respectfully,

JNO. D. JUDSON, *Cr.*

15. The following letter:

OGDENSBURG BANK, *Aug.* 14, 1840.

P. L. HALL, ESQ., Agent, &c.

In mine of the 12th instant, requesting a new policy on our cotton factory at Malone, I omitted to state that the policy sent me last year was not made out in accordance with the original one. It does not give us the right to put the factory in operation, if we should wish. The original one does, in the words following, "It is understood that the factory is not in operation, and that the assured have the liberty to put the same in operation agreeably to the representation heretofore

made by Jonathan Stearns. As I presume the above clause was overlooked by you when you made out the policy, I have now to request, that you have it inserted in the one you send me, that takes effect as of August 30, 1840, for one year.

Yrs., &c.

JNO. D. JUDSON, *Cash'r.*

16. A policy to the bank for one year, from August 30, 1840, the written clauses in which were as follows:

Their cotton factory building and fixtures, and moveable machinery in the same, situated at Malone, in the State of New York, being the same formerly owned by Jonathan Stearns, namely: Three thousand dollars on said building and fixtures, including water-wheel, drums, shafts, and gearing, and eleven thousand dollars on said moveable machinery. It is understood that the factory is not in operation, and that the assured have liberty to put the same in operation, agreeably to the representation heretofore made by Jonathan Stearns. The assured warrant that the waste shall be removed to a safe distance from the mill as often as once in forty-eight hours, and that the lamps in the carding rooms shall be enclosed in glass.

17. The following letter:

OGDENSBURG BANK, *August 27th*, 1840.

PARKER L. HALL, ESQ., *Agent, &c.*

DEAR SIR: Will you do me the favor to send me a copy of the original survey and application as made by Jonathan Stearns at the time Stearns effected an insurance on the cotton factory, &c., at Malone, as I observe that the first policy made out for us specifies "agreeably to the representations heretofore made by Jonathan Stearns." This institution does not know what those representations are, and as the factory is soon to be put in operation by Stearns, we having leased the same to him for one year, we wish you to send us a copy of the survey and application, in order to have Stearns act within those representations. We also wish you to send us your abstract of having the factory put in operation by Jonathan Stearns, under the policy that will take effect on the 30th instant, for one year from that time. If, on receipt of a copy of survey and application, it shall not be found sufficiently correct, you will be notified, and shall expect you will consent to have the policy adapted to the corrected application, &c., &c. In the policy of 1839 you say "contained in their application." I am not aware that this institution has made any specific application, and suppose you intended the one given as to details by Stearns.

Yours, &c.,

JNO. D. JUDSON, *Cashier.*

18. The following letter:

OGDENSBURG BANK, *Aug.* 11, 1841.

PARKER L. HALL, *Agent, &c.*

DEAR SIR: I enclose my draft for $245, being the amount of pre-

mium for the continuance of policy No. 622, P, given to the President, Directors and Company of the Ogdensburg Bank, on cotton factory, &c., at Malone, Franklin county, New York, and which will expire on the 30th instant at noon. Please send me a new policy, or a renewal receipt for the continuance of the same policy, for one year from the 30th instant. The factory is now and has been in operation the last year, under a lease to Col. Jonathan Stearns. His lease will expire soon, and whether the bank will lease it again is more than I can say at present, but still we wish the same clause in the new policy that is in the present one, viz., that we have the right to put the mill in operation, &c., should we wish.

Yours, &c.,

JNO. D. JUDSON, *Cashier*.

19. A policy to the bank for one year, from August 30, 1841, the written clauses in which were as follows:

Their cotton factory building and fixtures, and machinery therein, situated at Malone, in the State of New York, as follows, namely: Three thousand dollars on said cotton factory building and fixtures, including water-wheel, drum, shafts, and gearing, and eleven thousand dollars on said moveable machinery in said factory building. The assured warrant that the waste shall be removed to a safe distance from the mill as often as once in forty-eight hours, and that the lamps in the carding-room shall be enclosed in glass. It is understood that the mill is under lease to Jonathan Stearns, and may again be leased to him or some other tenant, the assured being answerable for the warranty as above.

On this policy were the following endorsements:

No. 704.

OGDENSBURG BANK, *March* 18, 1842.

To the MANUFACTURERS' INSURANCE COMPANY, *Boston*.

The assured having made a contract of sale, and given possession of the property within named to Eli Clark, William Green, and Hugh McGill, and having bound them to make good the warranty contained in the policy, the insured request that the same may be allowed; and that they, the insured, may still hold the policy for their own benefit, and they do still continue the same warranty in relation to the waste and lights, as is contained in the policy.

JNO. D. JUDSON.

Approved March 22, 1842.

By P. L. HALL, *Agent*.

20. The following letter:

OGDENSBURG BANK, *Aug*. 19, 1842.

PARKER L. HALL, ESQ.

DEAR SIR: Above you have my draft for $245, being amount of premium for continuance of policy No. 704, P, given to the President, Directors and Company of the Ogdensburg Bank, on cotton factory, &c.,

at Malone, Franklin county, New York, and which will expire on the 30th instant at noon. Please send me a new policy for one year from 30th instant, made out in the names of Eli Clark, William Greene, and Hugh McGill, (the persons to whom we have given a contract of sale, and who are now carrying on the factory,) and I would wish the following clause inserted in the new policy, viz: "It is understood that the property is under a contract of sale by the Ogdensburg Bank to the said Eli Clark, William Greene, and Hugh McGill, which is yet unpaid; and it is hereby agreed that, in case of loss by fire, the money is to be paid to the Ogdensburg Bank."

Yours, &c.,

JNO. D. JUDSON, *Cashier*.

21. A policy to the plaintiffs for one year, from August 30, 1842, the written clauses in which were as follows:

Their cotton factory building, fixtures and machinery in the same, situated at Malone, in the State of New York, as follows, namely: Eleven thousand dollars on said factory building and fixtures, including water-wheel, drums, shafts, and gearing, and three thousand dollars on said moveable machinery in said building. The assured warrant that the waste shall be removed to a safe distance from the mill as often as once in forty-eight hours, and that the lamps in the carding-rooms shall be enclosed in glass.

It is understood that the property is under a contract of sale by the Ogdensburg Bank to the assured, which is yet unpaid, and the loss, if any, is to be paid to the Ogdensburg Bank. This policy is issued upon the representation formerly made by Jonathan Stearns, the former owner, which representation is binding on the assured.

22. The following letter:

OGDENSBURG BANK, *Sept.* 7, 1842.

PARKER L. HALL, ESQ.

DEAR SIR: I return you the policy received a few days since from you, as it is made out different from the old policy, or the original policy in 1838. See my letter of 25th August, 1838. We wish the new policy to read as heretofore, thus, viz: $3,000 on said cotton factory buildings and fixtures, including water-wheel, drums, shafts, and gearing; 11,000.00 on said moveable machinery in said factory buildings, &c., $14,000. You will observe that in the new policy, which I now return, you have reversed it, as follows: $3,000 on said moveable machinery, &c., $11,000 on cotton factory buildings and fixtures, &c. You will please correct it, and return to me by mail soon.

Very respectfully, &c.,

JNO. D. JUDSON, *Cashier*.

23. The following letter:

OGDENSBURG BANK, *August* 19, 1843.

P. L. HALL, ESQ., *Agent*, &c.

DEAR SIR: Above you have my draft for $245, being amount of premium for the continuance of policy, No. 810, P, given to Eli Clark,

William Greene, and Hugh McGill, on cotton factory at Malone, Franklin county, New York, and which will expire on the 30th instant at noon. Please send me a new policy, made out in the same names, and with the same clause in that as in the present policy, viz: It is understood that the property is under a contract of sale by the Ogdensburg Bank to Eli Clark, William Green, and Hugh McGill, which is yet unpaid; and it is hereby agreed that, in case of loss by fire, the money is to be paid to the Ogdensburg Bank.

Yours, truly, &c.,

JOHN D. JUDSON, *Cashier*.

24. A policy to the plaintiffs, dated August 30th, 1843, the written clauses in which were as follows:

Their cotton factory building and fixtures, and machinery in the same, situated at Malone, in the State of New York, as follows, viz: Three thousand dollars on said building and fixtures, including water-wheel, drums, shafts and gearing, and eleven thousand dollars on said moveable machinery. The assured warrant that the waste shall be removed to a safe distance from the mill as often as once in forty-eight hours, and that the lamps in the carding-rooms shall be enclosed in glass. It is understood that the property is under a contract of sale by the Ogdensburg Bank to the assured, which is yet unpaid, and it is hereby agreed that, in case of loss by fire, the money is to be paid to the Ogdensburg Bank.

25. The following letter:

OGDENSBURG BANK, *August* 14, 1844.

P. L. HALL, esq., *Agent*.

DEAR SIR: Above you have my draft for $245, being amount of premium for the continuance of policy No. 932, P, given to Eli Clark, William Green, and Hugh McGill, on cotton factory at Malone, Franklin county, New York, and which will expire on the 30th instant at noon. Please send me a new policy made out in the same names, and with the same clause in that as in the present policy, viz: "It is understood that the property is under a contract of sale by the Ogdensburg Bank to Eli Clark, William Green, and Hugh McGill, which is yet unpaid; and it is hereby agreed that, in case of loss by fire, the money is to be paid to the Ogdensburg Bank." Yours, &c.,

J. D. JUDSON, *Cashier*.

26. A policy to the plaintiffs, dated August 30th, 1844, the written clauses in which were as follows:

Their cotton factory building, fixtures, and machinery therein, situated at Malone, in the county of Franklin, and State of New York, namely, three thousand dollars on said building and fixtures, including water-wheel, drums, shafts, and gearing, and eleven thousand dollars on said moveable machinery. It is understood that the property is under a contract of sale by the Ogdensburg Bank to said Eli Clark, William Green, and Hugh McGill, which is yet unpaid, and it is hereby

agreed that, in case of loss by fire, the money is to be paid to the Ogdensburg Bank. The assured warrant that the waste shall be removed to a safe distance from the mill as often as once in forty-eight hours, and that the lamps in the carding-rooms shall be enclosed in glass.

The blanks on which all the foregoing policies were made were the same as that of the policy in suit, and the written clauses occurred in the same place.

27. The following letter:

OGDENSBURG BANK, *August*, 1845.

P. L. HALL, esq., *Agent, &c.*

DEAR SIR: Above you have my draft for $245, being the amount of premium for the continuance of policy No. 1089, P, given to Eli Clark, William Greene, and Hugh McGill, on our cotton factory at Malone, Franklin county, N. Y., and which will expire on the 30th instant at noon. Please send me a new policy made out in the same names, and with the same clause as that in the present policy, viz: "It is understood that the property is under a contract of sale by the Ogdensburg Bank to Eli Clark, William Green, and Hugh McGill, which is yet unpaid; and it is hereby agreed that, in case of loss by fire, the the money is to be paid to the Ogdensburg Bank. Your favor of the 11th instant is received. Yours, &c.,

J. D. JUDSON, *Cashier.*

28. The defendants then called Parker L. Hall, who testified that, prior to the first policy to Stearns, he was agent of the defendants in Pittsfield, and that his authority did not extend to the taking of new risks on this species of property.

It was admitted that such a use of lamps in the picker-room, as appeared in this case, enhanced the danger of fire, and was material to the risk.

To the admission of all this evidence the counsel for the plaintiffs then and there objected, on the ground that the policy contained no representations made by Jonathan Stearns, and had no reference whatever to any such representations, and that to admit extrinsic evidence of the representations of the said Stearns, and other extrinsic evidence, to connect the plaintiffs with those representations, and thus affect their rights by such representations, was not only to vary, enlarge, or modify the contract, as contained in the policy, but was in fact to set up and show, by extrinsic evidence, a distinct and different contract from that contained in the policy, and of which the policy is the written evidence on which the parties relied; and, as the printed clause in the policy referred only to representations of the assured, representations in form by the assured were the only representations which could legally be shown, and evidence that the parties did not mean the representations in form by the assured or expressed in the policy, but meant representations of Stearns was not admissible, because that would clearly be to enlarge or change the contract in the policy, or rather to set up a distinct and different contract.

But the honorable justice, who tried the cause, admitted all the evidence as proper and legal; and to this ruling and decision of the court, the counsel for the plaintiffs then and there excepted.

The counsel for the plaintiffs then introduced the following evidence:

1st. The following letter:

MANF. INS. COMPANY OFFICE,
Boston, July 17, 1834.

D. C. JUDSON, esq., *Ogdensburg*.

SIR: Yours of the 17th instant, (requesting to be informed whether Parker L. Hall, of Pittsfield, is the authorized agent of the Manf. Ins. Co., and if he is also authorized to assent to the transfer of a policy,) is received; and, in answer to the same, would beg leave to say, that Mr. Hall is the authorized agent of this company, and is permitted to assent to the transfer of a policy. Yours, respectfully,

SAML. HUNT, *Sec'y*.

2d. The following letter:

PITTSFIELD, 31*st August*, 1840.

JOHN D. JUDSON, esq., *Cashier*.

DEAR SIR: Herewith I enclose to you a renewed policy, No. 622, on cotton factory, &c.; I have inserted the clause agreeably to your direction.

DEAR SIR: I had deposited this letter in the post office when I received your favor of the 27th inst. The policy is made out by inserting liberty of putting it in operation as requested. The original survey I have not in my possession. It is in the office at Boston. Perhaps Mr. Stearns may have kept a copy; if so, you will be able to obtain it of him; if not, I may procure for you a copy at Boston. You will, of course, see to it that the waste is removed according to the warranty, and that the lamps be enclosed in glass. Respectfully,

P. L. HALL.

It appeared that the cashier then wrote to Stearns for a copy of his representation, but Stearns replied that he had none. No further inquiries were made about it.

The plaintiffs also proved that it was customary for these defendants, and other insurance companies in Boston, to issue policies on property, with which the underwriters were acquainted, in the printed form, like that in this case, with the clause referring to the "representation of the assured, contained in their application, to which reference is to be had," where no written application has in fact been made by the assured, and where there is no written representation to which reference can be had. The counsel for the defendants objected to the admissibility of the evidence by which these facts were proved.

The counsel for the plaintiffs requested the honorable justice who presided at the trial to instruct the jury—

1st. That whether the printed clause in the policy—"that this policy being made and accepted upon the representation of the said assured, contained in their application therefor, (to which reference is to be had)"—was to be taken as referring to the representation of Stearns, in 1834, was matter of law to be determined by the court, the construction and application of written contracts and instruments being wholly within the province of the court.

2. That, in the opinion of the court, the said clause was not to be taken as referring to the said representation of the said Stearns; that these representations are not to be taken as a part of the said policy, or as in any way binding on the plaintiffs, whose right to recover in this case could not be in any way affected by said representation.

3. That the evidence introduced by the defendants was not sufficient in law to bar the plaintiffs' right to recover.

But the honorable justice declined giving these instructions to the jury, and instructed them that they would be warranted in finding that the plaintiffs had adopted the representations made by Jonathan Stearns as a part of this policy; that, if those representations were adopted by the plaintiffs, they formed a part of the present policy in the same manner as if incorporated into it, and the use of lamps in the picker room, in the manner testified to, in violation of these representations, rendered the policy void, and the plaintiffs would not be entitled to recover, except for a return of the premiums paid for the last four years. And the jury were further instructed, that if they found the policy declared did not refer to the said representations of Stearns, and that no representation was in fact made or adopted by the plaintiffs respecting the use of lamps in the picker room, they would then take the law to be, that, as it was agreed by the parties that the use of lamps in the picker room in the manner found was material to the risk, it was the duty of the plaintiffs to disclose the fact of such use to the defendants, or their agent, when the policy was applied for, provided such use then existed, and was known to the plaintiffs and unknown to the defendants, and was then intended by the plaintiffs to be, and in fact was, continued after the policy was issued, and occasioned the loss in question; and that each failure of the plaintiffs, even without any fraudulent intent on their part, to make this fact known to the defendants, would avoid the policy. Thereupon the jury returned a verdict for the plaintiffs, for a return of four years' premium.

To these instructions, and to the said refusal to instruct, as well as to the admission of the said evidence, the plaintiffs then and there excepted; and prayed that their exceptions might be allowed and sealed by the said justice, and the same were allowed and sealed accordingly.

In witness whereof I have hereunto set my hand and affixed my seal, this tenth day of November, A. D. 1847.

[SEAL.]

LEVI WOODBURY,
Associate Justice Supreme Court U. S.

I, James B. Robb, clerk of the circuit court of the United States for

the district of Massachusetts, certify, that the foregoing is a true transcript of the record of said cause.

In testimony whereof I have hereto set my hand and affixed the seal of the said circuit court, this twenty-sixth day of December, in the year of our Lord one thousand eight hundred and forty-seven, and in the seventy-second year of the independence of the United States of America.

[SEAL.]

JA. B. ROBB, *Clerk*.

Filed 31st December, 1847.